

JUN 02 2009

Mr. Brian Johnson
North Dakota Manager
Enbridge Pipelines LLC-North Dakota
1100 Louisiana, Suite 3200
Houston, TX 77002

Re: CPF 3-2007-5022

Dear Mr. Johnson:

Enclosed is the Final Order issued in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$105,000. The penalty payment terms are set forth in the Final Order. This enforcement action closes automatically upon payment. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Mr. Ivan Huntoon, Director, Central Region, PHMSA

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0046 9525]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

)	
In the Matter of)	
)	
Enbridge Pipelines LLC-)	CPF No. 3-2007-5022
North Dakota,)	
)	
Respondent.)	
)	

FINAL ORDER

Pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) conducted an investigation of an incident involving a spill of approximately 9,030 gallons of crude oil from a pipeline operated by Enbridge Pipelines LLC-North Dakota (Enbridge or Respondent) near Stanley, North Dakota. Enbridge operates a 558-mile pipeline system that delivers crude oil from northwest North Dakota to Clearbrook, Minnesota.

The accident occurred on January 25, 2007, at the company's Stanley Pump Station, and involved a section of crude oil piping that had been temporarily idled during a construction project.¹ As a result of the subsequent OPS investigation, the Director, Central Region, OPS (Director), issued to Respondent, by letter dated August 21, 2007, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 195.406 and proposed assessing a civil penalty of \$105,000 for the alleged violation.

Respondent responded to the Notice by letter dated September 18, 2007 (Response). Enbridge did not contest the allegation of violation but offered information and explanations regarding the proposed penalty and requested that the proposed civil penalty be reduced or eliminated. Respondent did not request a hearing and therefore has waived its right to one.

¹ The spill was contained on site and did not migrate to any water sources or underground wells. *See*, OPS Violation Report, at 3.

FINDING OF VIOLATION

In its Response, Enbridge did not contest the allegation in the Notice that it violated 49 C.F.R. Part 195, as follows:

Item 1: The Notice alleged that Respondent violated 49 C.F.R. § 195.406(b), which in relevant part states:

§ 195.406 Maximum operating pressure.

(a) . . .

(b) No operator may permit the pressure in a pipeline during surges or other variations from normal operations to exceed 110 percent of the operating pressure limit established under paragraph (a) of this section. Each operator must provide adequate controls and protective equipment to control the pressure within this limit.

The Notice alleged that Respondent violated § 195.406(b) by permitting the pressure in its pipeline during surges or other variations from normal operations to exceed 110 percent of the line's maximum operating pressure.² Specifically, the Notice alleged that Enbridge allowed a line at the Stanley Pump Station to exceed 110% of the line's maximum operating pressure by failing to provide a pressure relief device on an isolated section. As part of the construction project that began in November, 2006, the company had isolated the section of line by installing a blind flange on one end and a one-way check valve on the other. On January 25, 2007, the outside temperature increased significantly, thereby causing the pressure in the isolated line to exceed 100% of its specified minimum yield strength (1470 psig) and the pipe to fail.

Respondent did not contest the allegation of violation. Accordingly, upon consideration of all of the evidence, I find that Respondent violated 49 C.F.R. § 195.406(b), as more fully described in the Notice.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to an administrative civil penalty not to exceed \$100,000 per violation for each day of the violation, up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: the nature, circumstances, and gravity of the violation,

² The maximum operating pressure of the line was 980 psig. *See*, Violation Report, at 2.

including adverse impact on the environment; the degree of Respondent's culpability; the history of Respondent's prior offenses; the Respondent's ability to pay the penalty and any effect that the penalty may have on its ability to continue doing business; and the good faith of Respondent in attempting to comply with the pipeline safety regulations. In addition, I may consider the economic benefit gained from the violation without any reduction because of subsequent damages, and such other matters as justice may require.

The Notice proposed a total civil penalty of \$105,000 for violation of § 195.406(b). Providing adequate pressure control is a key part of maintaining pipeline safety and protecting the environment. Pipeline operators are obligated to ensure that the maximum operating pressure of their lines is not exceeded because damage and failures can result, as occurred in this case. In its Response, Enbridge requested a reduction or elimination of the civil penalty based upon: (1) the company's prompt response to the accident, including cleanup; (2) the corrective actions it initiated after the accident to prevent similar accidents; (3) the minimal impact that the accident had on public safety and the environment; (4) its cooperative response to the OPS investigation; and (5) its compliance history.

The corrective actions to which Respondent refers, however, were taken after the accident had already occurred. It is true that PHMSA considers any "good faith" efforts in calculating and assessing civil penalties, but only for those actions that an operator has taken in a reasonable attempt to achieve compliance. Once an accident has occurred or a violation has been discovered, PHMSA would expect any prudent and responsible operator to cooperate in preventing another accident or violation.

With respect to Respondent's contention that the release's impacts on public safety and the environment were minimal, I would note that virtually any release of hazardous liquids from a pipeline can result in serious risk of injury. In this case, the pipeline ruptured and released approximately 9,030 gallons of crude oil into the environment. Respondent is fortunate that no greater environmental harm or physical injury occurred. The record indicates that at least one Enbridge employee was on site at the time of the incident and therefore could have been injured.

There is no evidence to suggest that Respondent lacks the ability to pay the penalty or that its imposition could affect the company's ability to continue doing business. Respondent has presented no information that would warrant a reduction in the civil penalty proposed in the Notice. Respondent's past compliance history was taken into account in formulating the initial proposed penalty. Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$105,000 for violating §195.406(b).

Payment of the civil penalty must be made within 20 days of service. Federal regulations (49 C.F.R. § 89.21(b)(3)) require this payment be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-341), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 269039, Oklahoma City, OK 73125; (405) 954-8893.

Under 49 C.F.R. § 190.215, Respondent has the right to submit a petition for reconsideration of this Final Order. Should Respondent elect to do so, the petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of a petition automatically stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order shall be effective upon receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued